

\*\*E-Filed 9/19/08\*\*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MATTHEW RIEDER,

Defendant.

Case Number CR 02-20010-01 JF

ORDER<sup>1</sup> RE CORRESPONDENCE  
DATED NOVEMBER 29, 2007

[re: doc. no. 31]

The Court has received correspondence from Defendant Matthew Rieder, dated November 29, 2007, in which Defendant requests that the Court modify his sentence to reflect credit for time served in state prison. The Clerk of the Court filed this correspondence on December 5, 2007.

It appears that the most appropriate manner in which to construe Defendant's letter request is as a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. However, characterization of Defendant's request as a § 2255 motion might have serious consequences for Defendant, because such characterization would subject any later motion under

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<sup>1</sup> This disposition is not designated for publication in the official reports.

1 § 2255 to the restrictive conditions that federal law imposes upon a “second or successive” (but  
2 not upon a first) federal habeas motion. *See Castro v. United States*, 540 U.S. 375, 377 (2003).  
3 The Court cannot characterize Defendant’s letter request as a motion pursuant to § 2255 without  
4 warning Defendant of these potential adverse consequences and giving Defendant an opportunity  
5 to withdraw or amend his filing. *See id.* at 383.

6 Accordingly, Defendant is granted thirty (30) days in which to file a document informing  
7 the Court whether he wishes to proceed under § 2255. If Defendant does not file such a  
8 document, the Court will assume that Defendant wishes to withdraw his letter request. If  
9 Defendant does elect to proceed under § 2255, notice shall be given to the government so that it  
10 may file a response.

11 IT IS SO ORDERED.

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14 DATED: September 19, 2008

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17 JEREMY FOGEL  
18 United States District Judge  
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1 This Order has been served upon the following persons:  
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3 Defendant *pro se*:  
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5 Matthew Rieder  
6 Federal Correctional Institution  
7 P.O. Box 800  
8 Herlong, California 96113  
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